IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Arbitration Petition No. 320 of 2007

1. Suresh G.Kewalramani
and another ..Petitioners

vs.

Abhyudaya Cooperative Bank
Ltd. ...Respondent

Mr.A.S.Desai for petitioners.
Mr.V.C.Ghosalkar for respondent.

CORAM: S.C.DHARMADHIKARI J
22nd October,2007

P.C.

1. This is an Arbitration Petition under sec.9 of the Arbitration and Conciliation Act, 1996. The first respondent Bank proposes to invoke the jurisdiction of the Central Registrar appointed under the Multistate Cooperative Societies Act, 2002. They are contending that there are disputes which have arisen after the loan was availed of by petitioner no.1 from the respondent Bank. It is their case that the respondent sold some shares and adjusted the sale proceeds towards the claim of the Bank. However, the shares worth Rs.59,00,000/- are still lying with the respondent. The respondent is not selling and/or disposing of these shares but are retaining them for reasons best known to the respondent. In such circumstances, once the

Arbitrator appointed by the Central Registrar steps in to exercise his jurisdiction, his powers are circumscribed by the Arbitration and Conciliation Act, 1996. Although the appointment of the Arbitrator is by Central Registrar under the Multistate Cooperative Societies Act, exercise of powers as Arbitrator would be governed by the Arbitration and Conciliation Act, 1996.

2. During the pendency of the said Arbitration, the petitioners claim the following reliefs:

> "(a) pending the hyearing and final disposal of the Arbitration proceedings and 120 days thereafter this Hon'ble Court be pleased to direct the respondent Bank to return the shares as Exh.S forthwith;
>
> and/or in the alternative
>
> (b) the Respondent Bank be directed to sell the shares and adjust the sale proceeds in the Loan Account of Petitioner No.1(a) and after closing the loan account of petitioner no.1(a) pay the balance amount to the petitioners.

3. An affidavit in reply is filed by the respondent and while not disputing that certain shares were pledged with it, its stand is that the shares which were handed in have been classified in 3 categories. The categorisation is at page 13 of the affidavit filed by the Manager of the respondent. It is urged that due to default committed by the petitioners in repayment of loan it was decided to sell the pledged shares and certain shares have been sold. The sale proceeds of Rs.9,37,107/- are credited in the loan account. However, all the shares could not be sold for the reasons set out in para 16 of the reply.

4. Mr,.Desai appearing for the petitioners denies this contention and urges that the shares which are lying with the respondent are neither returned nor sold. He states that grave and serious predjudice is being caused to the petitioners in as much as the petitioner would lose an opportunity to urge before the Arbitral Tribunal that nothing is due and payable and the respondent cannot withhold the shares which have been pledged indefinitely.

5. On the contents of para 12 of the affidavit in reply, I enquired of Mr.Ghosalkar as to whether the respondent is still willing to sell the pledged

shares. Mr.Ghosalkar hands over a compilation enclosing therewith the details of the loan account and list of shares lying with the Bank. He submits that the outstanding amount is to the tune of Rs.27,50,000/-

6. Mr.Desai does not admit the correctness of the list but urges that without prejudice to the rights and contentions of the petitioners, they have no objection if the bank disposes of the shares even now. Mr.Ghosalkar upon taking instructions makes a statement that the Bank is ready and willing to do so provided the petitioners comply with certain requisitions and requirements pertaining to the shares. In my view, at this stage, without going into the rival contentions on merits of the controversy the interest of justice would be subserved if the following order is passed:-

a) The respondent Bank to intimate to the petitioners the requirement pertaining to the shares which are lying with them and calling upon the petitioners to comply therewith. The petitioners to be intimated about the requirements within a period of 10 days from today. Upon receipt of communication from the respondent, the petitioners to rectify the defects, if any, and

make all necessary compliances so as to enable the respondent Bank to sell the shares. Such compliance is to be made within a period of 15 days from the date of receipt of the notice.

b) After all compliances are made as above, the respondent Bank should dispose of the shares pertaining to which, the compliance has been made and appropriate the sale proceeds towards its claim against the petitioners. If there is any surplus the same shall be returned to the petitioners with accrued interest.

c) The respondent Bank to allow the petitioners to inspect all the documents pertaining to the pledged shares as also their loan account to enable the petitioners to make necessary compliance.

6) This order is passed without prejudice to the rights and contentions of both sides in the pending arbitration. Needless to state that this is without prejudice to the rights and contentions of both sides including the plea of the petitioners that the Bank is responsible for misplacing some of the shares.

8. Arbitration Petition is disposed of in the

above terms. No costs.

(S.C.DHARMADHIKARI J.)